

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1200 of 1988

Hon'ble MR.JUSTICE Y.B.BHATT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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SAIFFUDIN ABASBHAI JADALIWALA

Versus

ROSHANBHAI RASULBHAI MANAGAURI

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Appearance:

MR RN SHAH for Petitioner

MR BHARAT T RAO for Respondent No. 1

MS HARSHA DEVANI for Respondent No. 2

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CORAM : MR.JUSTICE Y.B.BHATT

Date of decision: 14/03/97

ORAL JUDGEMENT

1. This is a revision under section 115, CPC, filed by the original defendant challenging the order of the trial court whereby the trial court has directed a specific document to be impounded and sent to the Collector for adjudication and recovery of the appropriate deficit stamp duty together with penalty thereon, under the

provisions of the Bombay Stamp Act, 1958.

2. The short facts leading to the present revision are as under:

2.1 The present petitioner-original defendant no.2 had, during the course of the trial, produced a mortgage deed of immovable property as evidence in support of his case at Mark 86/1. This was objected to by the plaintiff, on the ground that as long as the same was not adequately stamped as required by the said Act, the same could not be read as evidence. However, it appears that the first defendant had also filed an application praying that the document in question be returned to him, and this application was resisted by the other side on the ground that once a document is presented in the court with the intention of being read or treated as evidence, and if the said document is found to be insufficiently stamped, there is no provision under the said Act whereby the same can be returned to the party who had lodged the said document. By virtue of section 33 of the said Act the only option open to the Court was to impound the document and to forward the same to the Collector for adjudication and recovery of the deficit stamp duty with the appropriate penalty thereon. Thus, the trial court accepted the contention of the original plaintiff, and ultimately directed that the document, which on facts and on interpretation is found to be a mortgage deed, could not be returned to the defendant; the application for return of the document was, therefore, rejected. The trial court also directed the said document to be impounded and directed the same to be sent to the concerned Collector to recover the deficit stamp duty and the requisite penalty (both the amounts having been quantified in the order) and recover the same from the defendant by following the prescribed procedure.

3. It is this order which is the subject matter of the present revision.

4. The correct legal position applicable to such facts is by now well settled. This court has consistently taken a view on this aspect starting from the case of Z.A. Chinwala, reported at 19 GLR page 626, followed by subsequent decisions viz. in the case of Manubhai I.Gadvi in Civil Revision Application No.1726/82 decided on 8th March 1984 (Coram: S.B. Majmudar J.) reported at 1984 GLH (UJ) page 43, and in the case of Ratilal Jivabhai Patel, in Civil Revision Application No.606/85 decided on 15th December 1989 (Coram: G.T. Nanavati J.), reported at 1990 (1) GLH (UJ) page 8.

5. The consistent view has been to the effect that under the Bombay Stamp Act, 1958 a party producing a document in a court of law has an option to pray for the document being admitted on payment of deficit stamp fees along with ten times the penalty. But this is merely an option. There is no obligation on his part to pay the deficit stamp fee along with 10 times the deficit stamp duty by way of penalty irrespective of whether he wants the document to be admitted in evidence or not. The court cannot insist that the document should be tendered in evidence on payment of deficit stamp duty along with the penalty at 10 times the amount of the deficit. There is no provision in the Stamp Act which empowers a court to oblige a litigant to pay the deficit along with the penalty quantified at 10 times the deficit, and get the document admitted. It is perfectly open to a litigant to say that he does not want the document to be admitted and will take the consequences. The trial court, therefore, has no jurisdiction to direct the petitioner-plaintiff pay deficit along with the penalty. Furthermore, the court also has no jurisdiction to quantify the amount of the deficit and/or to quantify the penalty. The latter aspect viz. determination of the deficit and levy of penalty is not the function of the court, but is a function of the Collector in accordance with the procedure specified under the Bombay Stamp act. Once it is seized of the document, which in the opinion of the court, is not adequately stamped, it cannot then proceed to adjudicate upon the quantum of the deficit and/or quantify the consequential penalty on such deficit. This is beyond the jurisdiction of the court. The Court has both a duty and an obligation, once it is seized of such a document, to impound the document and to forward it to the Collector for adjudication of the deficit and penalty, and recover the same, as contemplated by section 37 and 39 of the Bombay Stamp Act. In short, the court cannot make a coercive recovery either by directing the party to pay the deficit stamp duty and penalty as may have been quantified by the court. Obviously such quantification is not the function of the court, neither does the court have any such power under the Bombay Stamp Act. In the light of the well settled legal principles applicable to the facts of the case, the impugned order is required to be modified. The direction given by the trial court for impounding the said document and forwarding the same to the Collector is upheld. However, the Collector on receiving the document shall proceed to adjudicate thereon for determination of the deficit Stamp duty and the consequential penalty, without being bound by the quantification made by the trial court. The

Collector having adjudicated upon the said document,  
shall proceed to recover the amount that may be found due  
in accordance with law.

5. Subject to the aforesaid observations, the  
present revision stands dismissed. Rule is discharged  
with no order as to costs.

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